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CITIBANK (SOUTH DAKOTA), N.A.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

11 NICK MAKREAS,) Case No. CV 11 2406 MMC
12 Plaintiff,)
13 vs.) [Assigned to the Honorable Maxine M.
14 THE MOORE LAW GROUP, A.P.C. a) Chesney]
California corporation; CITIBANK (SOUTH)
15 DAKOTA), N.A., a business entity, form) RENEWED NOTICE OF MOTION OF
unknown, DOES 1 through 25 INCLUSIVE, et) DEFENDANT CITIBANK (SOUTH
16 al.,) DAKOTA), N.A. TO DISMISS PURSUANT
Defendants.) TO FEDERAL RULE OF CIVIL
17) PROCEDURE 12(b)(6)
18)
19)
20)
Hearing:
Date: *July 29, 2011*
Time: *9:00 a.m.*
Ctrm: *Courtroom 7, 19th Floor*

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on **July 29, 2011**, at **9:00 a.m.**, or as soon thereafter as the
 3 matter may be heard before the Honorable Maxine M. Chesney in **Courtroom 7** of the above-
 4 entitled court located at 450 Golden Gate Avenue, San Francisco, California, 94102, defendant
 5 Citibank (South Dakota), N.A. (“Citibank”) will and hereby does move this Court, pursuant to
 6 Federal Rule of Civil Procedure 12(b)(6), for an order dismissing the Complaint (the “Complaint”)
 7 filed on May 17, 2011 by plaintiff Nick Makreas (“Plaintiff”) on the following grounds:

8 First, the First Cause of Action for violation of the federal Fair Debt Collection Practices
 9 Act, 15 U.S.C. § 1692, et seq. (the “FDCPA”), fails as a matter of law because Citibank is not a
 10 “debt collector” subject to the FDCPA and is not subject to FDCPA claims under a purported
 11 “vicarious liability” theory.

12 Second, the Second Cause of Action under the Fair Credit Reporting Act, 15 U.S.C. § 1681,
 13 et seq. (“FCRA”), which is based upon allegations that Citibank supposedly furnished inaccurate
 14 information to credit reporting agencies regarding Plaintiff’s Citibank credit card account, fails as a
 15 matter of law because Section 1681s-2(a) of the FCRA provides no private right of action for
 16 alleged inaccurate credit reporting. Thus, the Second Cause of Action must be dismissed as a
 17 matter of law.

18 Third, the Third Cause of Action under California’s Rosenthal Fair Debt Collection
 19 Practices Act, Cal. Civ. Code § 1788, et seq. (the “Rosenthal Act”), fails on numerous independent
 20 grounds: (a) to the extent the claim is based on alleged inaccurate credit reporting, the Third Cause
 21 of Action is preempted by the FCRA; (b) Plaintiff fails to allege sufficient factual allegations to
 22 state a Rosenthal Act claim; (c) the Rosenthal Act does not permit Plaintiff to recover statutory
 23 damages on a per violation basis and, instead, Plaintiff is entitled to a maximum of \$1,000 per
 24 action, not per violation, under the Rosenthal Act’s plain language and recent decisions; and (d) the
 25 Rosenthal Act claim is barred by the applicable statute of limitations.

26 Finally, the Fourth Cause of Action for violation of California’s Unfair Competition Law,
 27 California Business and Professions Code section 17200, et seq. (the “UCL”), fails because
 28 Plaintiff lacks standing to pursue his claim. The Complaint does not include allegations of an

1 identifiable economic injury arising from reliance on an alleged misrepresentation or other act of
2 unfair competition. In addition, Plaintiff cannot recover "damages" under the UCL as a matter of
3 law, and the "allegations" underlying the UCL claim are impermissibly vague and, therefore, fail to
4 state a claim.

5 This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points
6 and Authorities [Docket Entry No. 4, filed on June 9, 2011], the pleadings and papers on file
7 herein, all other matters of which the Court may take judicial notice and upon such other or further
8 material as may be presented at or before the hearing of this matter.

9
10 Dated: June 16, 2011

Respectfully submitted,

11 STROOCK & STROOCK & LAVAN LLP
12 JULIA B. STRICKLAND
13 MARCOS D. SASSO
14 ALEXANDRIA KACHADOORIAN

15 By: /s/ Alexandria Kachadoorian
16 Alexandria Kachadoorian

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18 CITIBANK (SOUTH DAKOTA), N.A.
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)
ss)

I am employed in the County of Los Angeles, State of California, over the age of eighteen years, and not a party to the within action. My business address is: 2029 Century Park East, Suite 1800, Los Angeles, California 90067-3086.

On June 16, 2011, I served the foregoing document(s) described as: **RENEWED NOTICE OF MOTION OF DEFENDANT CITIBANK (SOUTH DAKOTA), N.A. TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

- (VIA PERSONAL SERVICE)** By causing to be delivered the document(s) listed above to the person(s) at the address(es) set forth above.
- (VIA U.S. MAIL)** In accordance with the regular mailing collection and processing practices of this office, with which I am readily familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California that same day in the ordinary course of business, I deposited such sealed envelope, with postage thereon fully prepaid, for collection and mailing on this same date following ordinary business practices, addressed as set forth below.
- (VIA FACSIMILE)** By causing such document to be delivered to the office of the addressee via facsimile.
- (VIA OVERNIGHT DELIVERY)** By causing such envelope to be delivered to the office of the addressee(s) at the address(es) set forth above by overnight delivery via Federal Express or by a similar overnight delivery service.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 16, 2011, at Los Angeles, California.

Rennie Santhon
[Type or Print Name]

/s/ *Rennie Santhon*

[Signature]

SERVICE LIST

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